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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. TIMOTHY ALLEN MILLIGAN, Defendant and Appellant.	G039546 (Super. Ct. No. 07WF1983) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Commissioner. Affirmed. Requests for judicial notice. Granted. Motion for judicial notice. Granted.

Jackie Menaster, under appointment by the Court of Appeal, for Defendant and Appellant.

ACLU Foundation of Northern California, Michael T. Risher; ACLU Foundation of Southern California, Peter Eliasberg; ACLU Foundation of San Diego and Imperial Counties and David Blair-Loy for the American Civil Liberties Union of

Northern California, the American Civil Liberties Union of Southern California and the American Civil Liberties Union of San Diego and Imperial Counties as Amici Curiae on behalf of Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Janet Neeley and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

Mennemeier, Glassman & Stroud, Kenneth C. Mennemeier and Kelcie M. Gosling for Governor Arnold Schwarzenegger and the California Department of Corrections and Rehabilitation as Amici Curiae on behalf of Plaintiff and Respondent.

* * *

INTRODUCTION

In August 2007, Timothy Allen Milligan pleaded guilty to one count of failing to register as a sex offender in violation of Penal Code section 290, subdivision (g)(2)[1] and admitted two prior felony convictions suffered in March 1987 for violating former sections 261(2) and 289, subdivision (a). The trial court struck one of the two prior convictions and sentenced Milligan to a total term of 32 months in prison. In addition, the court ordered Milligan to submit to DNA testing and to register as a sex offender pursuant to section 290.

In his appeal from the judgment, Milligan argues various amendments and additions to the sex offender registration laws, enacted since his initial duty to register commenced in March 1987, when considered collectively, constitute punishment and, therefore, would violate the ex post facto clauses of United States and California Constitutions if retroactively applied to him.

[1] All statutory references are to the Penal Code. Although section 290 was repealed and replaced by the Sex Offender Registration Act, effective October 13, 2007 (Stats. 2007, ch. 579, § 8, p. 3741), in this opinion, we refer, unless indicated otherwise, to the version of section 290 in effect at the time of Milligan's guilty plea to the current offense.

In our initial opinion, we affirmed the judgment, with a proviso that Milligan will not be subject to the residency restrictions and global positioning system (GPS) monitoring requirements of the Sexual Predator Punishment and Control Act: Jessica's Law (SPPCA) because they do not apply retroactively. The Attorney General took the position the SPPCA's residency restrictions and GPS monitoring requirements did not apply retroactively to Milligan.

Appearing as amici curiae on behalf of respondent, the Governor and the California Department of Corrections and Rehabilitation (CDCR) challenged that conclusion and requested rehearing. We ordered rehearing on our own motion (Cal. Rules of Court, rule 8.268(a)(1)) and requested briefs addressing only the SPPCA.

Milligan filed a brief on rehearing, as did the Governor and the CDCR, and three California affiliates of the American Civil Liberties Union, as amici curiae on behalf of Milligan.[2] Respondent declined to file a brief. We heard oral argument on rehearing on September 22, 2009.

In our initial opinion, we concluded that Milligan will not be subject to the SPPCA's residency restrictions and GPS monitoring requirements because he committed the offenses subjecting him to sex offender registration before the SPPCA's effective date. The briefs on rehearing have convinced us that conclusion was premature. We now conclude the issue whether the SPPCA's residency restrictions and GPS monitoring requirements are retroactive and will apply to Milligan is not ripe for adjudication. Later, if Milligan suffers actual harm from enforcement of the residency restrictions and GPS monitoring requirements, he may challenge their validity by petition for writ of habeas corpus or action for declaratory and injunctive relief.

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[2] The American Civil Liberties Union's affiliates filed a motion for judicial notice, Milligan filed a request for judicial notice, and the Governor and the CDCR filed a request for judicial notice. The motion for judicial notice and the requests for judicial notice were unopposed. We grant them all.

We affirm the judgment.

FACTS

In 1987, Milligan suffered felony convictions for violating former section 261(2) (forcible rape) and former section 289, subdivision (a) (forcible sexual penetration with a foreign object). Because he was convicted of sex offenses, he was required to register under section 290, subdivision (g)(2).

On August 30, 2007, Milligan pleaded guilty to a felony count of failure to register as a sex offender. He was sentenced to a term of 32 months in prison. The trial court ordered Milligan to pay fines and a security fee, register as a sex offender, and provide DNA samples.

At oral argument, counsel informed us Milligan is scheduled to be released on parole on October 4, 2009.

DISCUSSION

I. Amendments and Changes Since 1987 to the Sex Offender Registration Laws

Since March 1987, the sex offender registration laws have been amended to enhance registration requirements, create a public notification and inquiry system, require DNA collection and sampling, and impose residency restrictions and GPS monitoring. The challenged amendments and additions to the sex offender registration laws can be placed into four categories.

The first category, the subject of briefing on rehearing, is the SPPCA. Approved by California voters in 2006 as Proposition 83, the SPPCA added section 3000.07, amended section 3003.5 to prohibit registered sex offenders to reside within 2,000 feet of any school or park where children regularly gather, and added section 3004, subdivision (b) to require GPS monitoring of certain defined sex offenders for life. The SPPCA states: "It is the intent of the People in enacting this measure to help Californians

better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses. [¶] . . . [¶] It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply." (Voter Information Guide, Gen. Elec. (Nov. 7, 2006) text of Prop. 83, § 2, subd. (f), p. 127 & § 31, p. 138.)

The second category is the 2003 and 2005 amendments to section 290, which imposed additional registration requirements. Section 290 was amended in 2003 so that a person who is required to register as a sex offender must reregister within five working days of changing his or her residence (§ 290, subd. (a)(1)(A)) or establishing a second residence (§ 290, subd. (a)(1)(B)), and must personally inform the local law enforcement agency in writing within five working days of changing residence within or outside of California (§ 290, subd. (f)(1)). (Stats. 2003, ch. 634, § 1.3.) Section 290 was amended again in 2005 to expressly impose a duty to register on "[a]ny person required to register pursuant to any provision of this section, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5." (§ 290, subd. (a)(2)(F), added by Stats. 2005, ch. 704, § 1; Stats. 2005, ch. 722, § 3.5.)

The third category is the public access to information and inquiry statutes, sections 290.4 (added in 1994) and 290.46 (added in 2004). Section 290.4, which became operative on July 1, 1995, requires the Department of Justice to operate a service through which members of the public may ask for a determination whether a specific person must register as a sex offender. (§ 290.4, added by Stats. 1994, ch. 867, § 4.) Section 290.46, which became effective September 24, 2004, requires the Department of

Justice to make certain information about registered sex offenders available to the public via an Internet Web site. (§ 290.46, added by Stats. 2004, ch. 745, § 1.)

The fourth category is the DNA and Forensic Identification Data Base and Data Bank Act of 1998, section 295 et seq. (the DNA Act), under which sex offenders now must submit DNA samples. The DNA Act (Stats. 1998, ch. 696, § 2) added sections 295, 295.1, 296, 296.1, and 296.2 to the Penal Code. (See *Good v. Superior Court* (2008) 158 Cal.App.4th 1494, 1500.) "The [DNA] Act required DNA samples from defendants convicted of a number of listed felony offenses, as well as defendants required to register for a felony sex offense pursuant to former section 290." (*Ibid.*) On November 2, 2004, California voters approved Proposition 69, which made significant amendments to the DNA Act. Proposition 69 amended section 296, subdivision (a) to broaden the scope of persons required to submit DNA samples. (See *Good v. Superior Court, supra,* 158 Cal.App.4th at p. 1500.) Proposition 69 added section 296.1 to set forth administrative procedures for collecting DNA samples from various classes of persons, including any person required to register under section 290. (§ 296.1, subd. (a); see also § 296, subd. (a)(2)(A).) Proposition 69 expressly made section 296.1, subdivision (a)(2) through (6) retroactive. (§ 296.1, subd. (b).)

After reviewing principles of ex post facto law and the challenged amendments and additions to the sex offender registration laws, we address whether each category of the challenged amendments and additions individually would constitute an ex post facto violation if applied retroactively. We conclude Milligan's challenges to the SPPCA's residency restrictions and GPS monitoring requirements, and the 2005 amendment to section 290, part of the second category, are not ripe for adjudication. Under well-established authority, the other challenged amendments and additions in categories two, three, and four do not constitute punishment.

Next, we consider the 2003 amendment to section 290, the DNA sampling and collection laws, and the public notification and information access laws collectively.

Applying the two-part test from *Smith v. Doe* (2003) 538 U.S. 84, we conclude those laws were not intended to be punitive and are not punitive in nature and effect.

II. The Ex Post Facto Clauses

Article I, section 10, clause 1 of the federal Constitution states, in pertinent part: "No state shall . . . pass any . . . ex post facto law . . . ." Article I, section 9 of the California Constitution similarly states an "ex post facto law . . . may not be passed." The California provision is analyzed in the same manner as its federal counterpart. (*People v. Grant* (1999) 20 Cal.4th 150, 158.)

The ex post facto clauses of the federal and state constitutions prohibit enactment of laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." (*Collins v. Youngblood* (1990) 497 U.S. 37, 43; see also *People v. Grant, supra,* 20 Cal.4th at p. 158.) "'An *ex post facto law* is a retrospective statute applying to crimes committed before its enactment, and substantially injuring the accused. . . .' [Citation.] If a crime is committed before the 'effective date' of a statute and the statute retroactively increases the punishment for the crime or eliminates a defense, the statute violates the ex post facto clauses." (*People v. Jenkins* (1995) 35 Cal.App.4th 669, 672.)

In *Smith v. Doe*, *supra,* 538 U.S. 84, the United States Supreme Court confirmed a two-part test to determine whether a statutory scheme is punitive for purposes of ex post facto analysis. The court first determines whether the legislature intended to impose punishment: "If the intention of the legislature was to impose punishment, that ends the inquiry." (*Id*. at p. 92.) If the court determines the legislature intended to enact "a regulatory scheme that is civil and nonpunitive," then the court must determine whether the statutory scheme is """so punitive either in purpose or effect as to negate [the State's] intention" to deem it "civil."""" (*Ibid*.) To analyze the effects of the statute, the court must consider seven factors noted in *Kennedy v. Mendoza-Martinez*

(1963) 372 U.S. 144. Those factors, which are "'neither exhaustive nor dispositive,'" are whether the statutory scheme (1) has been regarded in our history and traditions as punishment, (2) imposes an affirmative disability or restraint, (3) promotes the traditional aims of punishment, (4) has a rational connection to a nonpunitive purpose, (5) is excessive with respect to this purpose, (6) comes into play only on a finding of scienter, and (7) applies to behavior which is already a crime. (*Smith v. Doe, supra,* 538 U.S. at pp. 97, 105; see also *People v. Presley* (2007) 156 Cal.App.4th 1027, 1032.)

III. Individual Analysis of the Challenged Amendments and Additions to the Sex Offender Registration Laws

A. *First Category: The SPPCA*

The Governor and the CDCR argue in their brief on rehearing that Milligan's challenge to the SPPCA's residency restrictions and GPS monitoring requirements is not yet ripe for adjudication because he currently is in prison and he will not have to comply with the residency restrictions and GPS monitoring requirements until he is released on parole. Once Milligan is released from prison, the Governor and the CDCR argue, "it is speculative that Milligan's choice of residence will actually violate the 2,000-foot restriction or that Jessica's Law will otherwise affect him."

California courts may decide only justiciable controversies. (*Golden Gate Bridge etc. Dist. v. Felt* (1931) 214 Cal. 308, 316; see 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 21, pp. 84-85.) The concept of justiciability includes "the intertwined" requirements of ripeness and standing. (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1182.)

"The ripeness requirement . . . prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. . . .

[T]he ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170; see also *Sherwyn v. Department of Social Services* (1985) 173 Cal.App.3d 52, 57.) """A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition."""" (*Consumer Cause, Inc. v. Johnson & Johnson, supra,* 132 Cal.App.4th at p. 1183.)

Section 3003.5, subdivision (b) states, "it is unlawful for any person *for whom registration is required* pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather." (Italics added.) Section 3004, subdivision (b) states that any inmate convicted of a registerable sex offense "who is committed to prison and *released on parole* pursuant to Section 3000 or 3000.1" shall be monitored by a GPS unit. (Italics added.)

As Milligan currently is in prison, he is not required to register as a sex offender pursuant to current section 290 and therefore is not now subject to the SPPCA's residency restrictions. Milligan is not now subject to the GPS monitoring requirements because he has not been released on parole. For any of several reasons, Milligan might never be subject to either the residency restrictions or GPS monitoring requirements. Thus, the question whether the SPPCA's residency restrictions and GPS monitoring requirements are retroactive and apply to Milligan is not yet ripe for adjudication.

At oral argument, we discussed remanding the matter to the trial court to conduct a hearing and decide whether to stay enforcement of the residency restrictions and GPS monitoring requirements until the California Supreme Court issues an opinion in the case of *In re E.J.*, Supreme Court No. S156933 (*E.J.*). *E.J.* is a petition for writ of habeas corpus filed directly with the California Supreme Court by four parolees claiming enforcement of the residency restrictions has left them unable to find housing. At issue

in *E.J.* is whether the SPPCA's residency restrictions violate the ex post facto clauses of the state and federal constitutions if applied to parolees who suffered convictions before the SPPCA's effective date.

In *E.J.*, the Supreme Court initially stayed enforcement of the residency restrictions of section 3003.5 against the petitioners in that case until determination of their petition for writ of habeas corpus. The court later issued an order denying the petitioners' application for a further stay "without prejudice to the filing of an action for declaratory and injunctive relief in an appropriate superior court."

After further consideration, we do not believe remanding to the trial court would be the best disposition. In *E.J.*, the Supreme Court permitted the petitioners to challenge the SPPCA's residency restrictions by petition for writ of habeas corpus after they were released from prison and could show actual harm from enforcement of the restrictions. Another means to challenge the SPPCA's residency restrictions, suggested by the California Supreme Court in its order denying the stay application, is for the parolee to seek injunctive or declaratory relief in the trial court when the claim becomes ripe.

A petition for writ of habeas corpus, or lawsuit for declaratory or injunctive relief, is available to Milligan if and when he can show actual harm from enforcement of the residency restrictions and GPS monitoring requirements. Our opinion is without prejudice to Milligan pursuing those or other available remedies, including a stay of enforcement of the residency restrictions and GPS monitoring requirements of the SPPCA.

B. *Second Category: Sex Offender Registration—Amendments to Section 290*

1. *People v. Castellanos*

In *People v. Castellanos* (1999) 21 Cal.4th 785, 788 (*Castellanos*), the California Supreme Court addressed whether retroactive application of the sex offender

registration requirement imposed by section 290 constituted an ex post facto violation. In that case, the defendant was convicted of burglary and receiving stolen property. (*Castellanos, supra,* 21 Cal.4th at p. 789.) He was sentenced to a term of 14 years in prison and ordered to register as a sex offender pursuant to section 290 on his release. (*Castellanos, supra,* 21 Cal.4th at p. 789.) He argued on appeal that requiring him to register as a sex offender violated the ex post facto clauses of the federal and state Constitutions because the provision in section 290 requiring him to register took effect after he committed the offenses for which he was convicted. (*Castellanos, supra,* 21 Cal.4th at p. 789.)

The Supreme Court concluded the sex offender registration requirement imposed by section 290 did not constitute punishment for purposes of ex post facto analysis, reasoning: "The sex offender registration requirement serves an important and proper remedial purpose, and it does not appear that the Legislature intended the registration requirement to constitute punishment. Nor is the sex offender registration requirement so punitive in fact that it must be regarded as punishment, despite the Legislature's contrary intent. Although registration imposes a substantial burden on the convicted offender, this burden is no more onerous than necessary to achieve the purpose of the statute." (*Castellanos, supra*, 21 Cal.4th at pp. 788, 796.)

Based on *Castellanos*, the court in *People v. Allen* (1999) 76 Cal.App.4th 999, 1001 concluded retroactive application of a 1995 amendment to section 290 imposing lifetime registration on persons discharged or paroled from juvenile commitment did not violate the ex post facto clauses.

2. The 2003 and 2005 amendments to section 290

Castellanos did not consider the 2003 and 2005 amendments to section 290, so we will consider each in turn. In applying the first part of the two-part *Smith v. Doe* test, we have found nothing to indicate the Legislature enacted the 2003 amendment with the intent to impose punishment. (See *Castellanos, supra,* 21 Cal.4th at p. 796 ["it does not appear that the Legislature intended the registration requirement to constitute punishment"].) Rather, the 2003 amendment to section 290, which requires the sex offender to reregister and notify local law enforcement within five working days of changing residence, was enacted as part of a statutory scheme that is regulatory in nature. (*Wright v. Superior Court* (1997) 15 Cal.4th 521, 527 ["The statute [section 290] is thus regulatory in nature, intended to accomplish the government's objective by mandating certain affirmative acts"].)

Section 290's purpose is to make sure convicted sex offenders, who are considered likely to reoffend, are readily available for police surveillance at all times. (*Wright v. Superior Court, supra,* 15 Cal.4th at p. 527.) The 2003 amendment is rationally connected with, and advances, that nonpunitive purpose by requiring sex offenders to make themselves available for such surveillance within five working days of changing residence or acquiring a second residence. The 2003 amendment does impose an additional burden on sex offenders. But that burden, together with other burdens imposed by section 290, is not "so punitive in fact that it must be regarded as punishment" and is "no more onerous than necessary to achieve the purpose of the statute." (*Castellanos, supra,* 21 Cal.4th at p. 796.)

Milligan has not shown he will ever be subject to the 2005 amendment to section 290. That amendment imposes a duty to register even when a defendant's conviction has been dismissed pursuant to section 1203.4, unless the defendant obtains a certificate of rehabilitation and is entitled to relief from registration. (Stats. 2005, ch. 704, § 1; Stats. 2005, ch. 722, § 3.5.) Section 1203.4 provides a trial court may

permit a defendant to withdraw a guilty plea once the defendant has fulfilled all terms of probation for the full term of probation, and is not currently incarcerated or facing charges for a different offense. (§ 1203.4, subd. (a).) The 2005 amendment will apply to Milligan only if and when a court permits him to withdraw his guilty plea under section 1203.4 and dismisses the charge. The issue whether the 2005 amendment to section 290 applies retroactively to Milligan therefore is not yet ripe for judicial decision. (See *Pacific Legal Foundation v. California Coastal Com.*, *supra,* 33 Cal.3d at p. 170.)

C. *Third Category: Public Notification and Access to Sex Offender Information*

In *Smith v. Doe*, *supra,* 538 U.S. at pages 89-90, 105-106, the United States Supreme Court upheld an Alaska statute requiring sex offenders to register with law enforcement and making much of the registration information publicly accessible. The Alaska statute allowed law enforcement to make publicly accessible via the Internet a registered sex offender's name, aliases, home address, photograph, place of employment, crime, length and conditions of sentence, and a statement whether the offender was in compliance with registration requirements and could be located. (*Id*. at p. 91.) The Supreme Court concluded the Alaska Legislature intended to create a civil, nonpunitive regulatory scheme and the statute was not punitive in effect. (*Id*. at pp. 96, 105-106.) "Given the general mobility of our population, for Alaska to make its registry system available and easily accessible throughout the State was not so excessive a regulatory requirement as to become a punishment." (*Id*. at p. 105.)

Based on *Smith v. Doe*, the court in *People v. Presley, supra,* 156 Cal.App.4th at page 1035, concluded the public notification requirements of sex offender registration under section 290.46 did not constitute punishment for purposes of the Sixth Amendment. The *Presley* court observed, "[t]he court's analysis of the Alaska statute is particularly relevant since California's public notification statutes are quite similar." (*People v. Presley, supra,* 156 Cal.App.4th at p. 1034.)

California's public notification and access statutes, section 290.4 et seq., therefore do not constitute punishment and would not violate the ex post facto clauses if applied retroactively to Milligan.

D. *Fourth Category: DNA Collection and Sampling—The DNA Act*

In *People v. Travis* (2006) 139 Cal.App.4th 1271, 1293-1295, the court upheld DNA collection and sampling under sections 296 and 296.1 against an ex post facto challenge. The court reasoned, "[t]he imposition of a DNA testing requirement under section 296.1 for felony convictions may constitute a disadvantage or burden, but the statute was neither intended to nor does inflict punishment for commission of the crime. . . . Examination of the DNA sample collection law reveals that it was not enacted to punish convicted felons, but instead to establish a DNA database to assist in the identification, arrest, and prosecution of criminals." (*People v. Travis, supra,* 139 Cal.App.4th at p. 1295; see also *Good v. Superior Court, supra,* 158 Cal.App.4th at p. 1510 ["There is no constitutional bar to requiring DNA samples based on a conviction predating Proposition 69, so long as there remains a current requirement to register"].)

We agree with this reasoning and conclude retroactive application of the collection and sampling requirements of the DNA Act is not an ex post facto violation.

IV. Collective Ex Post Facto Analysis of the Challenged Amendments and Additions to the Sex Offender Registration Laws

Next, we address whether the 2003 amendment to section 290, the public access to information and inquiry statutes, and the DNA Act collectively make sex offender registration punitive. We return to the two-part test from *Smith v. Doe*.

As to the first part of the test, we find nothing to indicate the Legislature and the voters intended these amendments and additions collectively to constitute punishment. None of them individually was expressly labeled as punitive. The

challenged amendments and additions were made piecemeal by legislation or by voter initiative between 1998 and 2005 with no discernible coordinated effort or plan for them as a whole to impose additional punishment on sex offenders. Although the amendments and additions were codified in the Penal Code, "[t]he location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." (*Smith v. Doe, supra,* 538 U.S. at p. 94.)

For the second part of the *Smith v. Doe* test, we treat the 2003 amendment to section 290, the DNA Act (as amended by Proposition 69), and the public access and notification provisions of the sex offender laws as if they were enacted together as a single piece of legislation. Would this legislation be so punitive in nature and effect that it would have to be found to constitute punishment? No. Such legislation would require the sex offender to reregister and notify local law enforcement within five working days of changing residence or acquiring a second residence and to provide a DNA sample, make certain information about the sex offender available online, and permit a member of the public to inquire whether a particular person must register as a sex offender. In *Smith v. Doe, supra,* 538 U.S. at pages 98-99, the Supreme Court concluded registration and making information publicly accessible historically have not been deemed punitive. Reregistration upon changing residence, DNA sampling, and public access to information about the offender do not impose physical restraint "and so do[] not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." (*Id.* at p. 100.)

The purpose of the sex offender registration laws is to make convicted sex offenders readily available for police surveillance at all times. The purpose of the DNA sampling and collection laws is to establish a DNA database to assist in the identification, arrest, and prosecution of criminals. (*People v. Travis, supra,* 139 Cal.App.4th at p. 1295.) The purpose of public notification is "to inform the public for its own safety, not to humiliate the offender." (*Smith v. Doe, supra,* 538 U.S. at p. 99.) The legislation

would have a rational connection to those nonpunitive purposes, and would not be excessive in relation to those purposes. The additional burden on the sex offender of having to reregister and provide a DNA sample is no more onerous than necessary to achieve those purposes. (*Castellanos, supra*, 21 Cal.4th at p. 796.) Any humiliation the offender might suffer from public notification and access to information "is but a collateral consequence of a valid regulation." (*Smith v. Doe, supra,* 538 U.S. at p. 99.)

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.